

REMARKS

In a Restriction Requirement dated June 5, 2006, election is requested between Group I, claims 1-24, "drawn to a processor for controlling plurality of ballasts via inverter, classified in class 315, subclass 312," and Group II, claims 25-48 and 59-64 "drawn to a microprocessor utilized communications ports for controlling a gas discharge lamp, classified in class 340, subclass 531." Applicant hereby elects, with traverse, Group II, claims 25-48 and 59-64, for further examination. Claims 1-24 are hereby withdrawn. Applicant reserves the right to pursue the subject matter of claims 1-24 in one or more divisional applications and/or to rejoin claims 1-24 pursuant to MPEP §821.04.

Applicant traverses the restriction requirement because Group II is misclassified, and in accordance with MPEP § 808.02, the restriction is not proper. Applicant respectfully submits that examining Group I and Group II together will not produce an undue burden on the Examiner. Group I and Group II reside in the same art class. Each claim of Group I and Group II is directed to a ballast. It is Applicant's belief that a search of Group I will uncover any relevant art of Group II and vice versa. Accordingly, Applicant traverses the restriction requirement and requests reconsideration of the requirement for restriction.

Per MPEP § 808.02, in order to establish reasons for insisting upon restriction, the Examiner must show that: (A) the groups are in separate classes, (B) the groups have separate status in the art if classifiable together, or (C) the groups require a different field of search. None of these three requirements has been shown.

Addressing the latter requirement first, as recited in MPEP § 808.02 (C), a different field of search is shown "[w]here it is necessary to search for one of the distinct subjects in places where no pertinent art to the other subject exists..." In this instance, this simply is not the case. The claims of Group I and Group II are directed to ballasts. Applicant submits that it is not necessary to conduct a search with respect to Group I where no pertinent art to Group II exists, and that it is not necessary to conduct a search with respect to Group II where no pertinent art to Group I exists. Further, it is submitted that searches with respect to Group I will not be in places where no pertinent art to Group II exists, and that searches with respect

to Group II will not be in places where no pertinent art to Group I exists. Thus, the instant restriction cannot be based on MPEP § 808.02(C).

The instant restriction requirement cannot be based on MPEP § 808.02 (A) or (B) because Group I and Group II are classifiable together, and there is no support that Group I and Group II have separate status in the art. Group II is misclassified, and should be classified in the same class as group I. Group II is classified as being in class 340. Class 340 is entitled “Communications: Electrical.” As defined by the USPTO¹, “[t]his is the residual home for subject matter, not elsewhere classified, relating to communication by means which are in part or in whole electrical.” (Emphasis added). Further, the notes of the definition of class 340 emphasize that the class definition is only for those electrical communication systems that are not elsewhere classified.² Applicant submits that Group I is correctly classified in class 315 and that Group II is classifiable in class 315. Class 315 is entitled “ELECTRIC LAMP AND DISCHARGE DEVICES: SYSTEMS.” Thus, Group I and Group II are classifiable in the same class, and the instant restriction requirement cannot be based on MPEP § 808.02 (A).

MPEP § 808.02 (B) requires that when subject matter is classifiable together, separate status in the art must be shown in order to insist upon the restriction. Specifically, “each subject can be shown to have formed a separate subject for inventive effort when an explanation indicates a recognition of separate inventive effort by inventors.” MPEP § 808.02 (B). No such explanation has been provided. Thus, the instant restriction requirement cannot be based on MPEP § 808.02 (B).

¹ <http://www.uspto.gov/go/classification/uspc340/defs340.htm>

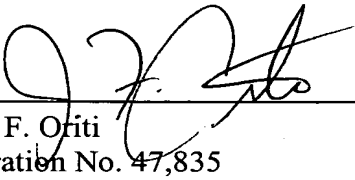
² See Note (1) of Class 340, “(1) Note: Since Class 340 takes, under the class definition, only those electrical communication systems which are not elsewhere classified...”

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For the reasons provided above, Applicant traverses the restriction requirement. Reconsideration and withdrawal of the restriction requirement are respectfully solicited, and early consideration and allowance of the present application is respectfully requested.

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